

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FIA CARD SERVICES, N.A.,)	No. 63642-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
VALENTINA KISELEV,)	UNPUBLISHED
)	
Appellant.)	FILED: <u>June 21, 2010</u>
)	
)	

Cox, J. – A motion to vacate an arbitration award must be filed within 90 days after the moving party receives notice of the award.¹ Here, because Valentina Kiselev did not file her motion to vacate the arbitration award within three months of such notice, her motion was time-barred. We affirm.

Kiselev and FIA Card Services, N.A., entered into a credit card agreement by Kiselev's use of the credit card. The agreement contained an arbitration provision. On Kiselev's default under the terms of the agreement, FIA filed a claim with the National Arbitration Forum and served a copy of the claim on Kiselev. When Kiselev did not file a response, the Forum mailed Kiselev a second notice of arbitration. Kiselev then filed a response with the Forum. After conducting a hearing, the arbitrator issued an award in favor of FIA for \$37,026.87 on November 4, 2008. A certificate of service on the award

¹ 9 U.S.C. § 12; RCW 7.04A.230(2).

indicates that the Forum mailed each of the parties a copy of the award by first class mail on the same date.

On April 30, 2009, FIA filed a Motion for Judgment on Arbitration Award in superior court. Kiselev filed her response on May 6, 2009. Her response includes a “COUNTERMOTION TO SET ASIDE ARBITRATION AWARD.”

A superior court commissioner heard the matter on May 12, 2009. After giving both parties an opportunity to speak, the commissioner entered a judgment on the award in favor of FIA.

Kiselev appeals.

JUDGMENT ON ARBITRATION AWARD

Kiselev argues that the trial court should have granted her motion to vacate the arbitrator’s award. We disagree.

The terms of the parties’ agreement and applicable law provide that the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16 governs this interstate action.² Notice of a motion to vacate an arbitration award under the FAA must be served upon the adverse party or his attorney “within three months after the award is filed or delivered.”³ Applying this provision, federal courts have held that “a party may not raise a motion to vacate, modify, or correct an arbitration award after the three month period has run, even when raised as a defense to a motion

² Walters v. A.A.A. Waterproofing, Inc., 120 Wn. App. 354, 358, 85 P.3d 389 (2004) (FAA applies where agreement affects interstate commerce).

³ 9 U.S.C. § 12.

to confirm [an arbitration award].”⁴

Here, the arbitration award was dated November 4, 2008. The award included a certificate of service indicating that it was mailed to Kiselev on that same date. After receiving notice of the award, Kiselev did not move to set aside the award within the three month limit under the FAA. Her “countermotion” was made over six months after notice of the award. This was untimely. The trial court properly entered judgment on the award.

Because the trial court properly entered judgment on the award, implicitly denying Kiselev’s motion to vacate, we do not address her remaining arguments. Many of them address the merits of her dispute with FIA and, thus, do not affect our decision.⁵

ATTORNEY FEES

FIA seeks attorney fees on appeal pursuant to the terms of the credit card agreement. In Washington, a party may recover attorney fees only when they are authorized by a private agreement, statute, or recognized ground of equity.⁶

Here, the credit card agreement between the parties provides,

⁴ Romero v. Citibank USA, Nat’l Ass’n, 551 F. Supp. 2d 1010, 1014 (E.D. Cal. 2008) (quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 175 (2nd Cir. 1984)).

⁵ See Davidson v. Hensen, 135 Wn.2d 112, 119, 954 P.2d 1327 (1998) (judicial review of an arbitration award in the context of a motion to confirm an arbitrator’s award is exceedingly limited and does not include a review of the merits of the case).

⁶ Mellor v. Chamberlin, 100 Wn.2d 643, 649, 673 P.2d 610 (1983).

If you default, unless prohibited by applicable law, we can also require you to pay the collection and court costs we incur in any collection proceeding, and a reasonable attorney's fee if we refer your account for collection to an attorney who is not our salaried employee.^{7]}

Under the terms of this provision, we grant FIA's request for fees, subject to its compliance with RAP 18.1(d).

We affirm the judgment on the award.

Cox, J.

WE CONCUR:

Jau, J.

Grosse, J

⁷ Clerk's Papers at 8-9.